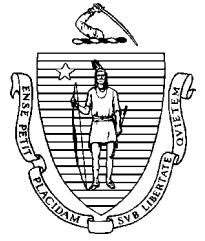




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 453

IN THE MATTER OF EUA COGENEX

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and EUA Cogenex (Cogenex) pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On June 16, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Cogenex. The Commission concluded that inquiry and, on, September 10, 1992, found reasonable cause to believe that Cogenex violated G.L. c. 268A.

The Commission and Cogenex now agree to the following findings of facts and conclusions of law:

1. Cogenex is a Massachusetts corporation engaged in the business of energy management.
2. At the time here relevant, Boston Edison offered a program entitled the Encore Program to assist large energy consumers to significantly reduce their energy consumption costs. Institutions that participate in the program select an electrical contractor to retrofit and/or replace existing equipment. Boston Edison incurs all expenses under the program.
3. Cogenex was the successful bidder under the Encore Program for Worcester County^{1/} and the following municipalities: Holliston, Newton, Walpole and Arlington. As such, Cogenex receives a percentage of avoided costs for generation savings realized from Boston Edison.^{2/}
4. On July 17, 1991, Cogenex hosted a Boston Harbor cruise on a custom designed cruising yacht. The explicit purpose of the cruise was for customer appreciation and to foster goodwill. The cruise included cocktails and dinner. Cogenex spent approximately \$2,229 hosting the event at a cost of \$79.06 per person.
5. Cogenex extended invitations to approximately 40 individuals, including seven public officials involved with the aforementioned contracts.
6. Two of the 28 individuals who attended the cruise were public officials.
7. Section 3 of G.L. c. 268A prohibits, otherwise than as provided by law, the giving or offering of anything of substantial value to any public official for or because of any official act performed or to be performed by such employee.^{3/} The Commission has found that private parties violate §3 when they entertain government officials (who are in a position to benefit them) in an effort to generate good will. *See e.g., In re State Street Bank*, 1992 SEC 580; *In re Stone & Webster*, 1991 SEC 552; *In re Rockland Trust*, 1989 SEC 416.
8. By providing a Boston Harbor cruise for public officials with the intent to generate and maintain good will and good customer relations with municipal officials, Cogenex violated G.L. c. 268A, §3.^{4/}

In view of the foregoing violation of G.L. c. 268A by Cogenex, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cogenex:

1. that Cogenex pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating G.L. c. 268A; and
2. that Cogenex waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: October 14, 1992

¹Unlike the three-way contracts under the Encore Program (Boston Edison, Cogenex and the municipality), the Worcester County contract was directly between the county and Cogenex.

²The present values of the contracts are as follows: Holliston, \$252,200; Newton, \$1,171,100; Walpole, \$471,800; Arlington, \$470,000 and Worcester County, \$1,121,000. Cogenex expects to realize a profit of 5 to 15 percent of the present values of the contracts over the life of the contracts.

³In the past, the Commission has considered entertainment expenses in the amount of \$50 to constitute "substantial value." *P.E.L. 88-1. See Commission Advisory No. 8 (Free Passes)*(issued May 14, 1985).

⁴For §3 purposes it is unnecessary to prove that any gratuities given were generated by some specific identifiable act performed or to be performed. In other words, no specific quid pro quo or corrupt intent need be shown. Rather, the gift may simply be an attempt to foster goodwill. It is sufficient that a public official, who was in a position to use his authority in a manner that would affect the giver, received a gratuity to which he was not legally entitled, regardless of whether that public official ever actually exercised his authority in a manner that benefitted the gift giver. *See Commission Advisory No. 8. See also United States v. Standerfer*, 452 F. Supp. 1178, (W.D.P.A. 1978), *aff'd* other grounds, 447 U.S. 10 (1980); *United States v. Evans*, 572 F.2d 455, 479-482 (5th Cir. 1978).